

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. ERODITO D. LOPEZ-CORRANZA

Appeal from the Criminal Court for Davidson County
No. 2004-B-1217 J. Randall Wyatt, Judge

No. M2007-01024-CCA-R3-PC - Filed October 26, 2007

The Petitioner, Erodito D. Lopez-Corranza, appeals from the order of the post-conviction court summarily dismissing his petition for post-conviction relief as time-barred. The State has filed a motion requesting that this Court affirm the judgment of the post-conviction court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. We grant the State's motion and affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Erodito D. Lopez-Corranza, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; and Victor S. Johnson, III, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The record reflects that on May 2, 2005, the Petitioner pleaded guilty to and was convicted of one count of attempted aggravated sexual battery. Pursuant to his plea agreement, he was sentenced to a term of seven years in the Department of Correction as a Range II, multiple offender. No appeal was taken.

On April 11, 2007, the Petitioner filed a petition for post-conviction relief. In his petition, the Petitioner alleged that his guilty plea was not knowingly and voluntarily entered because he received the ineffective assistance of counsel. He also asserted that as a "Foreign National," his rights pursuant to the "Vienna Convention on Consular Relations" were violated. On April 13, 2007, the post-conviction court entered an order summarily dismissing the petition, finding that it was

time-barred by the one-year statute of limitations and failed to meet any of the statutorily recognized exceptions to the statute of limitations. It is from this order of dismissal that the Petitioner appeals.

A person in custody under a sentence of a court of this state must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal is taken, or if no appeal is taken, within one year from the date on which the judgment becomes final. See Tenn. Code Ann. § 40-30-102(a). Our legislature has provided that the statute of limitations shall not be tolled for any reason. Id. Our legislature further mandated that time is of the essence of the right to file a petition for post-conviction relief and that the one-year limitation period is a condition of the right to file for post-conviction relief. Id.

The record in this case reflects that the Petitioner's judgment of conviction became final on or about June 2, 2005. See State v. Pendergrass, 937 S.W.2d 854, 837 (Tenn. 1996) (stating that, "[a]s a general rule, a trial court's judgment becomes final thirty days after its entry unless a timely notice of appeal or a specified post-trial motion is filed.") His petition for post-conviction relief was not filed until April 11, 2007. It is apparent from the record in this case that the petition was not filed within the time allowed by the statute of limitations.

On appeal, the Petitioner does not argue that his claim for post-conviction relief qualifies for an exception to the statute of limitations as set forth by our legislature. See Tenn. Code Ann. § 40-30-102(b). The Petitioner does argue on appeal that due process of law requires that the statute of limitations be tolled because of the Petitioner's alleged inability to speak or understand English. He argues that his inability to speak or understand English is the equivalent of mental incompetence and that due process requires tolling of the statute of limitation on the basis of a petitioner's mental incompetency. See Seals v. State, 23 S.W.3d 272, 279 (Tenn. 2000). We note that a panel of this Court has previously rejected the argument that due process requires that the post-conviction statute of limitation not be applied to petitioners who cannot read, write, or speak the English language. See Guillermo Matiaz Juan v. State of Tennessee, No. 03C01-9708-CR-00318, 1999 WL 76453 at *2 (Tenn. Crim. App., Knoxville, Feb. 18, 1999); see also Garcia Flores Isodoro v. State, No. M2002-01345-CCA-R3-CO, 2003 WL 1610877 at *1 (Tenn. Crim. App., Nashville, Mar. 27, 2003).

We conclude that the Petitioner's argument that the statute of limitations should be tolled because of his inability to read and speak the English language is without merit. We therefore conclude that the post-conviction court did not err in summarily dismissing the petition for post-conviction relief as time-barred. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE